



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/658,302

09/09/2003

William Shelmon

TTC-13002/08

2137

63796 7590 01/19/2007
GIFFORD, KRASS, GROH, SPRINKLE,
ANDERSON & CITKOWSKI, P.C.
P.O. BOX 7021
TROY, MI 48007-7021

EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT

PAPER NUMBER

3782

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
--	-----------	---------------

3 MONTHS

01/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/658,302

Applicant(s)

SHELMON ET AL.

Examiner

Justin M. Larson

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 3/2/06. These drawings are not approved because Figure 7 contains New Matter. Figure 7 shows specific locations of the container holder within the vehicle that were not specifically mentioned in the originally filed disclosure.

Claim Objections

2. Claim 1 is objected to because of the following informalities: In line 5, "recessed portion" should be "recessed opening". Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Schlesener (DE 10101642 A1).

Regarding claims 1 and 6, Schlesener discloses a collapsible container holder assembly, the container holder comprising: a carrier portion (5) having at least one recess opening formed therein, said at least one recessed opening extending between a top end and an opposite bottom end of said carrier portion; at least one container receptor portion (3) having a generally horizontal support surface (2), said receptor portion being adapted to telescopically engage and be retained within the at least one

opening formed in the carrier portion and wherein the at least one container receptor portion is adjustable between an extended and collapsed position relative to the carrier portion, said receptor portion protruding axially and downwardly relative to said bottom end while in said extended position such that said support surface is substantially below said bottom end. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Schlesener which is capable of being used in the intended manner, i.e., the holder assembly being used in a vehicle to carry a container where the carrier portion is mountable to a plurality of complementary mounting positions within the vehicle. There is no structure in Schlesener that would prohibit such functional intended use (see MPEP 2111). The carrier portion of Schlesener is capable of being mounted within a vehicle. Examiner places emphasis on the fact that the carrier of Schlesener is **capable** of being mounted to a plurality of complementary mounting positions within a vehicle, even if one determines that Schlesener does not disclose such positions.

Regarding claims 2 and 9, the carrier portion (5) of Schlesener includes at least one retaining member (sidewall) adapted to engage at least one complementary mounting point at the vehicle. It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. The sidewall of the carrier portion is capable of engaging a complementary mounting point in a vehicle.

Regarding claims 3 and 7, Schlesener discloses a locking mechanism (3a/4b) for locking the at least one container receptor portion in the extended position.

Regarding claims 4 and 8, the locking mechanism is locked by rotating the at least one container receptor portion in a first direction while extending and unlocked by rotating the at least one container receptor portion in an opposite direction.

Regarding claim 5, Schlesener discloses at least one retaining arm (3a) disposed on an exterior surface of the at least one container receptor portion, the at least one retaining arm operative to prevent the at least one container receptor portion from being pushed out from the carrier portion when the at least one container receptor is moved to the collapsed position

Response to Arguments/Amendments

5. Applicant's arguments filed 11/7/06 have been considered but are moot in view of the new ground(s) of rejection.

6. Examiner notes that Applicant failed to address the Drawings section of the previous Office Action, in particular, the New Matter issue with respect to Figure 7.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited art includes various container holders with height or depth adjustability.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

Art Unit: 3782

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML
12/29/06


ANTHONY D. STASHICK
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700